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ENVIRONMENTAL UPDATE

Increasing State and Federal Regulation of “E-Waste”

The term e-waste describes the many millions of mobile phones, computers, televisions and assorted other electronic devices that are discarded worldwide each year. Much of this e-waste contains hazardous materials, such as lead, mercury, cadmium and flame retardants—materials whose handling and disposal are subject to regulation under existing federal and state environmental laws in the United States and Europe. Until recently, however, there was virtually no regulation in the United States specific to the handling, recycling or disposal of e-waste and the hazardous materials it contains.

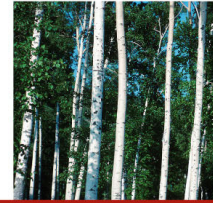
STATE REGULATION

Twenty-one states now either have programs in place to regulate e-waste or have passed legislation that requires implementation of e-waste regulatory programs in the next few years. Most of these laws were enacted as recently as 2007 and 2008. Eighteen of those states and New York City have enacted “Producer Responsibility” laws. The specific requirements of Producer Responsibility laws vary, but generally they impose upon certain manufacturers of electronic devices the obligation to finance, and sometimes develop and implement, systems for the collection, recycling and reuse of their discarded devices in that state or city. Some manufacturers also are voluntarily contributing to these efforts by creating take-back programs for discarded devices and reducing the amount of hazardous materials they use in the manufacture of new devices. A handful of states have taken a different approach to regulating e-waste by enacting laws that require landfill fees be paid when electronic devices are taken to municipal solid waste landfills. Several states have prohibited their disposal in municipal solid waste landfills altogether. In addition to adopting a disposal ban, California, which began regulating e-waste as early as 2003, currently is the only state whose e-waste regulatory program is funded by a consumer recycling fee that is collected by businesses at the point of sale of certain electronic devices. Already this year, 10 additional states have e-waste legislation under consideration.

FEDERAL REGULATION

The patchwork of e-waste regulatory programs enacted by states in recent years fills a vacuum of federal inaction in this area. Federal involvement in the regulation of e-waste has thus far been limited to the classification of discarded cathode ray tubes and mercury-containing equipment as waste subject to regulation under the Resource Conservation and Recovery Act, which regulates the handling, transport and disposal of hazardous wastes. The federal government also has placed certain restrictions on exports of cathode ray tubes. In the absence of federal e-waste regulation, the U.S. Environmental Protection Agency uses its voluntary Responsible Recycling program (www.epa.gov/epawaste/consERVE/materials/ recycling/index.htm) to promote recycling of discarded electronic devices. However, the EPA’s activities under the program are primarily limited to gathering data on e-waste management practices and making recommendations to the recycling industry that it adopt uniform operating procedures to foster effective environmental performance of electronics recyclers.

Efforts to increase the federal government’s role in the regulation of e-waste are under way. House Democrats have proposed limited legislation that would require the National Academy of Science to further study e-waste prior to regulating its handling and disposal. The study would evaluate “opportunities and barriers to reducing



electronic waste, reducing the use of hazardous materials in their manufacture, and designing electronic devices to facilitate re-use and recycling.” Further-reaching legislation proposed by other House Democrats seeks an immediate ban on the export of e-waste to developing countries, as well as handling and disposal requirements. This comprehensive e-waste bill is not, however, viewed as likely to gain traction in a Congress that is beset by many other pressing issues in 2009. It is believed that the bill calling for further study of e-waste prior to regulation has a far greater chance of passage in 2009 due to its more limited scope. In an effort to head off any comprehensive e-waste legislation in the near term, the recycling industry has suggested that the voluntary practices set forth by the EPA’s Responsible Recycling program be incorporated into existing operating standards used by the industry. It is believed doing so will bring greater credibility to the EPA’s program and reduce the growing call for increased regulation of e-waste.

E-CYCLING

Despite the variety of federal, state and local approaches to regulating e-waste, all have the same primary objective—to promote the safe and lawful recycling, or “e-cycling,” of discarded electronic devices. E-cycling reduces the amount of e-waste that reaches municipal solid waste landfills, which in turn decreases the risk of hazardous materials from discarded devices being released into the environment. E-cycling should also help curb U.S. exports of discarded electronic devices to developing countries in Asia and Africa. The valuable materials in the exported devices—plastics, glass, gold, silver, copper, brass and tin—are sometimes recovered using dangerous practices, such as smashing and burning of the devices, which directly expose workers and the environment to the hazardous materials contained within. In some cases, the remaining components of these electronic devices are burned or dumped in and around residential areas where they pose a significant risk to health and the environment. The conservation of nonrenewable resources, such as oil and precious metals, that are used in the manufacture of electronic devices is an additional benefit of e-cycling, as reuse reduces the need to obtain virgin resources. Conservation also reduces pollution generated by processes used to obtain and refine virgin resources for use in the manufacturing of electronic devices.

Greater regulation of e-waste is a reality, whether through the current patchwork of state programs or ultimately federal legislation and rulemaking that brings uniformity to e-waste regulation in the United States. What remains to be seen is whether the environmental benefits associated with e-cycling can live up to their promise in a manner that is financially sound for the recycling industry, consumers and electronics manufacturers.

FOR MORE INFORMATION

If you have any questions or comments, please contact Nathan Hunt at 937.443.6908 or Nathan.Hunt@ThompsonHine.com, or any of the other lawyers in our **Environmental** group.

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